SUPREME COURT, U.S.
LIBRARY

No. 58

Office - Supreme Court, U. S.
FILED
NOV 18 1955
HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1955

WILLIAM LUDWIG ULLMANN, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

[redacted]

INDEX

	Page
Opinions below	1
Jurisdiction	2
Statutory and constitutional provisions involved	2
Questions presented	3
Statement	3
Summary of argument	5
Argument	
I. The Immunity Act of 1954 does not violate the Self-Incrimination Clause of the Fifth Amendment	12
A. *Brown* v. *Walker* should not be overruled	13
B. The possible imposition on petitioner of non-criminal disabilities does not remove the 1954 Act from the rule of *Brown* v. *Walker*	24
C. The 1954 Act does not, and need not, bar prosecution for future criminal acts	28
D. The Immunity Act of 1954 need not bar state prosecution	31
II. The Act does not empower the District Court to grant immunity or to approve the propriety of the United States Attorney's judgment that the witness' testimony is in the public interest	35
A. The terms of the Act do not give the District Court power to "grant" immunity or to review the propriety of the United States Attorney's judgment that the testimony of the witness is necessary to the public interest	36
B. The legislative history of the Act, so far as it is pertinent, supports our construction that Congress did not impose a non-judicial function upon the District Courts	39

Argument, Continued

Page

1. The report of the House Judiciary Committee sustains our interpretation 39
2. The debates preceding the statute's enactment are inconclusive 42

C. If there be doubt, the construction of the statute which avoids the constitutional question should be preferred 43

D. Petitioner cannot question the validity of the statutory provisions relating to Congressional investigations 44

E. Under the proper construction of the Act, the District Court had sufficient evidence before it to permit a judicial determination that petitioner should be ordered to testify and produce evidence 46

III. The grand jury's questions relating to Communist affiliations of petitioner and others were proper and relevant to its inquiry and not violative of the First Amendment 47

IV. The District Court's order requiring petitioner to testify and produce evidence subject to the provisions of the Immunity Act is proper in form and affords him full protection from subsequent prosecution 50

Conclusion 51

Appendix 52

CITATIONS

Cases:

Adams v. *Maryland*, 347 U.S. 179 ..... 9, 14, 35

Amato v. *Porter*, 157 F.2d 719, certiorari denied, 329 U.S. 812 24

Ashwander v. *Tennessee Valley Authority*, 297 U.S. 288 ..... 11, 44

Ballamann v. *Fagin*, 200 U.S. 186 33

Cases—Continued

	Page
Barsky v. United States, 167 F. 2d 241	47
Bilokumsky v. Tod, 263 U.S. 149	25
Blackmer v. United States, 284 U.S. 421	11, 44,
Blair v. United States, 250 U.S. 273	12, 48
Blau v. United States, 340 U.S. 159, 340 U.S. 332	16, 17, 26
Boyd v. United States, 116 U.S. 616	25
Brotherhood of Ry. and S.S. Clerks, Etc. v. Texas and N.O.R., 24 F. 2d 426, affirmed, 281 U.S. 548	
Brown v. Walker, 161 U.S. 591,	5, 6, 12, 13, 14, 15, 18, 19, 20, 23, 24, 34
Burnet v. Coronado Oil & Gas Co., 285 U.S. 393	16
Burrell v. Montana, 194 U.S. 572	14
Cameron v. United States, 231 U.S. 710	21
Carter v. Carter Coal Co., 298 U.S. 238	45
Commonwealth of Massachusetts v. Mellon, 262 U.S. 447	44
Commonwealth of Pennsylvania v. Nelson, No. 10, this Term	
Communications Assn. v. Douds, 339 U.S. 382	49
Communist Party v. Subversive Activities Control Board, 223 F. 2d 531, No. 48, this Term	25, 48, 49
Connolly v. Union Sewer Pipe Co., 184 U.S. 540	45
Counselman v. Hitchcock, 142 U.S. 547	12, 17, 24
Crowell v. Benson, 285 U.S. 22	11, 43
Dahnke-Walker Co. v. Bondurant, 257 U.S. 282	44
Dennis v. United States, 341 U.S. 494	49
Dorchy v. Kansas, 264 U.S. 286	11, 45
Duplex Printing Press Co. v. Deering, 254 U.S. 443	40
Electric Bond & Share Co. v. Securities & Exchange Commission, 303 U.S. 419	46
Emspak v. United States, 349 U.S. 190	26
Feldman v. United States, 322 U.S. 487	9, 14, 32
Field v. Clark, 143 U.S. 649	45
Galvan v. Press, 347 U.S. 522	16
Glickstein v. United States, 222 U.S. 139	7, 14, 21
Gompers v. United States, 233 U.S. 604	17
Gooch v. United States, 297 U.S. 124	40
Hale v. Henkel, 201 U.S. 43	6, 14, 18, 33, 45

Cases—Continued

	Page
Heike v. United States, 217 U.S. 423, 227 U.S. 131	14, 21, 26, 27
Helvering v. Mitchell, 303 U.S. 391	24
Hines v. Davidowitz, 312 U.S. 52	35
Hoffman v. United States, 341 U.S. 479	14, 15, 26
Jack v. Kansas, 199 U.S. 372	14
Jeffrey Mfg. Co. v. Blagg, 235 U.S. 571	44
Lawson v. United States, 176 F.2d 49, certiorari denied, 339 U.S. 934	12, 47
Legal Tender Cases, 12 Wall. 457, 110 U.S. 421	13
Lewis v. United States, 348 U.S. 419	8, 28, 30
Marcello v. United States, 196 F.2d 437	32
Marcus, United States ex rel. v. Hess, 317 U.S. 537	24
Mason v. United States, 244 U.S. 362	26
McCarthy v. Arndstein, 266 U.S. 34	14, 15
McGrain v. Daugherty, 273 U.S. 135	45
National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U.S. 1	13
Nelson v. United States, 201 U.S. 92	48
Passenger Cases, The, 7 How. 283	15
Quinn v. United States, 349 U.S. 155	18
Regan v. New York, 349 U.S. 58	6, 14, 28, 31, 32, 51
Robertson v. Baldwin, 165 U.S. 275	17
Rogers v. United States, 340 U.S. 367	26
Shapiro v. United States, 335 U.S. 1	14, 27
Smith v. United States, 337 U.S. 137	14, 18, 25
Society for Savings v. Bowers, 349 U.S. 143	16
Steward Machine Co. v. Davis, 301 U.S. 548	11, 45
Touhy v. Ragen, 340 U.S. 462	31
Ullmann, In re, 128 F. Supp. 617	9
United States v. Bryan, 339 U.S. 323	14, 21
United States v. Butler, 297 U.S. 1	23
United States v. Calter, Inc., 344 U.S. 149	16
United States v. C.I.O., 335 U.S. 106	34, 43
United States v. DiCarlo, 102 F. Supp. 597	32
United States v. Frontier Asthma Co., 69 F. Supp. 994	29
United States v. Harriss, 347 U.S. 612	31, 34, 46
United States v. James, 60 Fed. 257	23

Cases—Continued

	Page
United States v. *Josephson*, 165 F.2d 82, certiorari denied, 333 U.S. 838	12, 47
United States v. *Kahriger*, 345 U.S. 22	8, 28, 30
United States v. *McGovern*, 60 F.2d 880	48
United States v. *Monia*, 317 U.S. 424	14, 20
United States v. *Moore*, 15 F.2d 593	29
United States v. *Murdock*, 284 U.S. 141	6, 9, 14, 31, 32
United States v. *Rumely*, 345 U.S. 41	11, 34, 43
United States v. *Saline Bank*, 1 Pet. 100	33
United States v. *Smith*, 206 F.2d 905	29, 30
United States v. *Swift*, 186 Fed. 1002	29, 30
Vajtauer v. *Commissioner of Immigration*, 273 U.S. 103	25
Williams v. *Standard Oil Co.*, 278 U.S. 235	45
Constitution of the United States:	
First Amendment	2, 47, 48
Fifth Amendment	2, 5, 6, 8, 16, 17, 25
Statutes:	
Act of January 24, 1862, 12 Stat. 333, R.S. 103, 2 U.S.C. 193	19
Act of June 25, 1948, 62 Stat. 683, Sec. 18	46
Compulsory Testimony Act of 1893, 27 Stat. 443 (49 U.S.C. 46)	12, 34
Immunity Act of 1954, 68 Stat. 745 (18 U.S.C. 3486 (Supp. II))	5, 9, 22, 27, 30, 38, 39, 44, 45, 52
Congressional Material:	
100 Cong. Rec. 12603	45
H. Rep. No. 2606, 83d Cong., 2d sess.	10, 31, 34, 40, 41
Miscellaneous:	
Corwin, *The Supreme Court's Construction of the Self-Incrimination Clause*, 29 Mich. L. Rev. 191	15, 33
Dixon, *The Fifth Amendment and Federal Immunity Statutes*, 22 Geo. Wash. L. Rev. 447	15
12 Hansard's *Parliamentary History of England* 675	20

Miscellaneous—Continued

	Page
Note, 10 Harv. L. Rev. 120	15
8 Wigmore, *Evidence* (3d ed. 1940) § 2192	20
8 Wigmore, *Evidence* (3d ed. 1940) § 2252	17
8 Wigmore, *Evidence* (3d ed. 1940) §§ 2252, 2261	18
8 Wigmore, *Evidence* (3d ed. 1940) § 2255	18
8 Wigmore, *Evidence* (3d ed. 1940) §§ 2255, 2281	15
8 Wigmore, *Evidence* (3d ed. 1940) § 2257	25
8 Wigmore, *Evidence* (3d ed. 1940) § 2281 and supplement	14

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 58

WILLIAM LUDWIG ULLMANN, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions in the Court of Appeals (R. 55-60) are reported at 221 F.2d 760. The opinion of the District Court (R. 28-44) granting the application of the United States Attorney under the Immunity Act of 1954 (68 Stat. 745, 18 U.S.C. 3486 (Supp. II)) for an order directing petitioner to testify is reported at 128 F. Supp. 617. There was no opinion rendered by the District Court adjudging petitioner guilty of contempt for refusing to comply with the order.

JURISDICTION

The judgment of the Court of Appeals was entered on April 4, 1955 (R. 60). The petition for a writ of certiorari was filed on May 2, 1955, and was granted on June 6, 1955 (R. 61). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Immunity Act of 1954 (Public Law 600, 83d Cong., 68 Stat. 745, 18 U.S.C. 3486 (Supp. II)) is set forth in the Appendix to this brief, *infra*, pp. 52-55.

The First Amendment to the Constitution of the United States provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment to the Constitution of the United States provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a wit-

ness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

QUESTIONS PRESENTED

1. Whether the Immunity Act of 1954, which provides absolute immunity from federal prosecution in exchange for testimony, is invalid under the Self-Incrimination Clause of the Fifth Amendment.

2. Whether Section (c) of the Immunity Act of 1954 charges the District Court with the duty of determining the propriety of affording immunity to petitioner in exchange for his testimony and thereby imposes upon it a non-judicial function.

3. Whether questions relating to Communist affiliations of petitioner and others are proper and violative of the First Amendment when asked in a grand jury inquiry into espionage committed on behalf of the Soviet Union during time of war.

4. Whether the order of the District Court that petitioner testify pursuant to the provisions of the Immunity Act of 1954 is deficient for failure to contain an express grant of immunity.

STATEMENT

On November 3, 1954, petitioner appeared before a grand jury in the Southern District of New York. This grand jury was inquiring into matters involving interference with and endangering of, and plans and attempts to interfere with and endanger,

the national security and defense of the United States by espionage and conspiracy to commit espionage in time of war in the Southern District of New York and elsewhere. Petitioner refused to answer various questions relating to the subject matter of the inquiry, asserting his privilege against self-incrimination under the Fifth Amendment to the Constitution of the United States.

On November 10, 1954 (R. 4), the United States Attorney for the Southern District of New York presented to the District Court an application for an order instructing petitioner to testify and produce evidence pursuant to Section (c) of the Immunity Act of 1954, 18 U.S.C. 3486 (Supp. II) (R. 1). The application described the subject matter of the grand jury inquiry, set forth the questions asked petitioner by the grand jury, and stated that he refused to answer the questions on the ground that his answers would tend to incriminate him. The application averred that, in the judgment of the United States Attorney, the testimony of petitioner was necessary to the public interest and that the application was made with the approval of the Attorney General. It was accompanied by the latter's letter of approval (R. 5).

Petitioner filed an affidavit in opposition to the application (R. 7). Although, in the Government's view, this affidavit had no bearing upon the question before the court, counter affidavits were filed directed to certain charges which it was felt should not go unanswered (R. 22, 23, 25). Upon the request of the court, the United States Attorney filed an affidavit of good faith (R. 6).

After argument and the submission of briefs and the above affidavits, the District Court handed down an opinion, dated January 31, 1955 (R. 44), sustaining the constitutionality of the immunity statute and granting the application (R. 28). An order, dated February 8, 1955, was issued by the court directing petitioner to appear before the grand jury and, pursuant to the statute, to answer the questions and testify and produce evidence with respect to the matters under inquiry (R. 44).

On March 8, 1955, after persisting in his refusal to answer the questions put to him by the grand jury, petitioner was adjudged in contempt. The court entered judgment sentencing him to six months' imprisonment with the right to purge (R. 53).

The Court of Appeals affirmed the judgment of the District Court in an opinion by Judge Frank, expressly adopting the reasoning and conclusions of the District Court's opinion (R. 55), with concurring opinions by Judge Clark and District Judge Galston (R. 59, 60).

SUMMARY OF ARGUMENT

I

The Immunity Act of 1954 does not violate the Self-Incrimination Clause of the Fifth Amendment since it provides immunity co-extensive with the constitutional privilege against self-incrimination.

A. Ever since the classic case of *Brown v. Walker*, 161 U.S. 591 (1896), it has been estab-

lished that testimony may be compelled under a statute which affords absolute immunity from prosecution. Petitioner first asks that *Brown* v. *Walker* be overruled, but the principle there set forth has been recognized and enforced by this Court in case after case, without the slightest suggestion on any part that it is unsound. The most recent decision following *Brown* v. *Walker* is *Regan* v. *New York*, 349 U.S. 58, decided in April 1955. In reliance upon these cases, Congress has enacted a large number of immunity statutes, so that almost every major piece of federal regulatory legislation now contains a compulsory-testimony-plus-immunity provision. Petitioner's challenge to the *Brown* case mainly reiterates arguments considered and rejected in 1896; these contentions cannot overcome the long-continued acceptance by Court and Congress, of the immunity principle.

1. At this late date, the meaning of the privilege cannot be determined from a literal interpretation of the brief formula identifying the privilege in the Constitution, as precluding any compulsory testimony even under promise of immunity. The Self-Incrimination Clause must be interpreted in the light of its history, purpose, and development.

2. In that light, the Fifth Amendment privilege is solely a privilege not to give testimony which would tend to subject one to federal prosecution for a prior criminal act. E.g., *Hale* v. *Henkel*, 201 U.S. 43; *United States* v. *Murdock*, 284 U.S. 141. Neither the common-law nor the constitutional privilege protects against disgrace or infamy, as is

illustrated by the settled rule that if prosecution for crime is barred by limitations the witness must testify. Accordingly, a statute which affords immunity from prosecution automatically satisfies the privilege and the Self-Incrimination Clause no longer bars the compulsion of testimony.

3. Similarly, the constitutional privilege does not protect against perjury committed while testifying, and therefore a federal immunity statute need not bar prosecution for perjury committed in testifying under its compulsion. *Glickstein* v. *United States*, 222 U.S. 139. It could not be otherwise. The power to compel testimony would be a nullity were there no right to require that the testimony be given under such safeguards as to compel it to be truthful. Ordinary witnesses may not refuse to testify on the ground that their testimony may leave them open to prosecution for lying under oath, and, once immunity has been granted, petitioner is in no different position than an ordinary witness.

4. Petitioner urges that the rights of "political and religious dissent" require a reevaluation of the Self-Incrimination Clause and of *Brown* v. *Walker*. But the questions asked petitioner were not idle probing into political beliefs; they concerned actual espionage on behalf of a foreign power—an undoubtedly serious crime comparable in every way to those with which Congress has heretofore dealt in immunity legislation.

B. Petitioner's second main contention is that his compelled testimony may reveal information

resulting in the imposition on him of various federal, state, and private "disabilities" of a non-criminal nature. Since in his view the 1954 Act does not protect against these "disabilities" or "sanctions" it is invalid.

1. The possible "disabilities" petitioner lists (Pet. Br. 16-19) are not punitive or criminal sanctions; they all fall into the class of prophylactic measures designed to remove dangerous or unsuitable persons from positions in which they can do harm, *e.g.*, removal from public employment. Such preventive measures have never been considered to be penalties or forfeitures within the Self-Incrimination Clause. Moreover, petitioner makes no showing at all that the imposition of these measures is anything but an "imaginary possibility" so far as he is concerned.

2. However, if petitioner is right in arguing that these "sanctions" are penalties or forfeitures under the Fifth Amendment, then the 1954 Act will protect him, should the occasion arise, since its immunity clause is as broad as the constitutional privilege.

C. A federal immunity statute need not bar prosecution for future criminal acts. The privilege itself has no relation to future criminal acts which may or may not be committed. *United States* v. *Kahriger*, 345 U.S. 22; *Lewis* v. *United States*, 348 U.S. 419. Whether prosecution for crime committed after compulsion of testimony may be aided by the compelled disclosures is not before the Court at present. However, the Im-

munity Act of 1954 is sufficiently broad to prevent any use of compelled disclosures if at some future time that issue should present itself for determination in a proper case.

D. To be valid, a federal immunity statute need not bar state prosecutions. *United States* v. *Murdock*, 284 U.S. 141; cf. *Feldman* v. *United States*, 322 U.S. 487. It becomes immaterial to this case, therefore, whether Congress has undertaken to do so in the present statute. Nevertheless, after considering the question at some length, the District Court concluded that Congress intended to and did bar state prosecution in the present statute. *In re Ullmann*, 128 F. Supp. 617; R. 32-35. If the question should be reached, we would support the position of the District Court (a) that Congress did bar state prosecutions, and (b) that Congress had the power to do so in a statute dealing with crimes against the national defense and security. Cf. *Adams* v. *Maryland*, 347 U.S. 179.

II

The Immunity Act of 1954 does not empower the court to approve the propriety of the United States Attorney's judgment that petitioner's testimony is necessary to the public interest. Therefore, the statute does not impose a non-judicial function on the court.

A. In unambiguous language, Section (c) (*infra*, pp. 53-55) makes clear that the District Court has no such function as petitioner suggests.

It provides: (1) there must be a proceeding before a grand jury or a case in the District Court; (2) the subject matter must relate to interference with or endangering of, or attempts to interfere with or endanger, the national security by treason, sabotage, espionage, sedition, seditious conspiracy or the like; (3) it must appear that in the judgment of the United States Attorney the testimony of a witness regarding such matters is necessary to the public interest; (4) the United States Attorney, with the approval of the Attorney General, shall make application to the court for an order directing the witness to testify; and upon such order, the witness shall not be excused from testifying or producing evidence. There is no suggestion that the court is required or empowered to approve or review the judgment of the United States Attorney and the Attorney General that the grant of immunity is in the public interest. The function of the court is only to order the witness to answer when it appears that the statutory conditions exist and that there is no other legal objection to the compulsion of his testimony.

B. The legislative history is inconclusive. The Report of the House Judiciary Committee supports our construction; there are a few statements in the debate tending the other way. On the whole, the history cannot justify petitioner's reading, and it does not require or warrant a construction other than that demanded by the plain language of the statute.

C. If there be doubt, the familiar teaching is that

"even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Crowell* v. *Benson*, 285 U. S. 22, 62; *United States* v. *Rumely*, 345 U. S. 41, 45.

D. Petitioner has no standing to attack the validity of the statutory provisions relating to *congressional* investigations. *Blackmer* v. *United States*, 284 U. S. 421; see *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, at 346-347. And even if it be assumed *arguendo* that Sections (a) and (b), relating to congressional investigations, are unconstitutional; Section (c) may stand and be enforced. *Dorchy* v. *Kansas*, 264 U. S. 286; *Steward Machine Co.* v. *Davis*, 301 U. S. 548, 598.

E. The District Court, having correctly construed the statute as not requiring it to review the judgment of the United States Attorney as to the public interest, did not err in failing to require that evidence be presented substantiating that judgment.

III

A. The grand jury's questions relating to Communist affiliations of petitioner and others were clearly relevant to its inquiry. It was obviously pertinent to an investigation into whether individuals furnished unauthorized information to the Soviet Union to ascertain if they were members of the Communist Party during the period in question. In any event, a witness is not entitled to urge objections of incompetency or irrelevancy,

such as a party might raise, for this is no concern of his." *Blair* v. *United States*, 250 U. S. 273, 282.

B. Since Congress may inquire into Communist Party membership in appropriate cases (*Lawson* v. *United States*, 176 F. 2d 49 (C. A. D. C.), certiorari denied, 339 U. S. 934; *United States* v. *Josephson*, 165 F. 2d 82 (C. A. 2), certiorari denied, 333 U. S. 838), there is nothing in the First Amendment to forbid such inquiry by a grand jury, especially where espionage on behalf of the Soviet Union is involved.

IV

The order of the District Court was issued pursuant to the provisions of the Immunity Act of 1954; it is an order to testify subject to the immunity provisions of that Act. There was no necessity for the court to redefine in its order the immunity so provided.

ARGUMENT

I

The Immunity Act of 1954 Does Not Violate the Self-Incrimination Clause of the Fifth Amendment

Since *Brown* v. *Walker*, 161 U. S. 591, decided in 1896, it has been thought to be established law that testimony may be compelled under a statute which affords "absolute immunity against future prosecution for the offence to which the question relates." *Counselman* v. *Hitchcock*, 142 U. S. 547, 586. The Compulsory Testimony Act of 1893, 27 Stat. 443, 49 U. S. C. 46, upheld in *Brown* v. *Walker*, served as the model for the present stat-

utes as well as for immunity provisions appearing in a large number of regulatory acts.

Petitioner first argues that *Brown* v. *Walker* should be flatly overruled and that all of this federal compulsory testimony legislation should be invalidated (Pet. Br. 11). Next, he attempts to show that the 1954 Immunity Act differs significantly from the prior statutes and runs afoul of the Fifth Amendment even if the legislation with which the Court has previously been concerned should still stand. On both counts, petitioner errs. The rule of *Brown* v. *Walker* is too deeply embedded in our constitutional jurisprudence to be cast aside at this time; and the present immunity statute does not differ in any relevant way from those which have long since been enacted by Congress and upheld by the courts.

A. *Brown v. Walker should not be overruled.*

It is now almost sixty years since *Brown* v. *Walker* was decided after most thorough consideration by the Court—as the three opinions demonstrate on their face. True, the decision was initially a close one but, like other notable divided rulings (*e. g.*, the *Legal Tender Cases*, 12 Wall. 457; 110 U. S. 421, 438; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1), this one achieved immediate and continued acceptance both in Congress and by the Court itself. Almost every major piece of federal regulatory legislation now contains a compulsory-testimony plus immunity provision modelled on the Interstate Com-

merce Commission statute upheld in 1896. See *Shapiro* v. *United States*, 335 U. S. 1, 6-7; 8 Wigmore, *Evidence* (3d ed. 1940) § 2281, n. 11, and supplement.[1] This device has been woven into the very warp and woof of public control of regulated activities.

As all four judges below recognized (R. 28, 31, 55, 59, 60), the doctrine of *Brown* v. *Walker* has also been reinforced over the years by the consistent opinions and holdings of this Court. See *Burrell* v. *Montana*, 194 U. S. 572, 578-9; *Jack* v. *Kansas*, 199 U. S. 372, 381, 382; *Hale* v. *Henkel*, 201 U. S. 43, 67-69; *Glickstein* v. *United States*, 222 U. S. 139, 141; *Heike* v. *United States*, 217 U. S. 423, 431-2, 227 U. S. 131, 141-4; *McCarthy* v. *Arndstein*, 266 U. S. 34, 42; *United States* v. *Murdock*, 284 U. S. 141, 149; *United States* v. *Monia*, 317 U. S. 424, 428, 433 ff; *Feldman* v. *United States*, 322 U. S. 487, 491; *Shapiro* v. *United States*, 335 U. S. 1, 28-29, 50; *Smith* v. *United States*, 337 U. S. 137, 146-148; *United States* v. *Bryan*, 339 U. S. 323, 336; *Hoffman* v. *United States*, 341 U. S. 479, 490; *Adams* v. *Maryland*, 347 U. S. 179. As recently as April 1955, *Regan* v. *New York*, 349 U. S. 58, 62, cited *Brown* v. *Walker* for the proposition that under the immunity statute there involved (apart from the problem of waiver), "it is clear beyond dispute that he [Regan] would have had to testify; the statute would have provided him with immu-

[1] Wigmore also lists the very large number of immunity statutes passed in England, Canada, and the several states of the United States.

nity from prosecution on the matters on which his testimony was sought, and thus his testimony could not possibly have been self-incriminatory."[2]

It is impossible, we believe, to read this line of cases without concluding that, ever since 1896, the Court and its individual members have accepted the rule of *Brown* v. *Walker* as an integral part of American constitutional law. There are no reservations of views, no queries, no hints of disagreement. Controversies have swirled around collateral problems, such as the scope of particular immunity clauses, but we have found no indication in this Court of less-than-full acceptance of the basic tenet that Congress can compel testimony by granting immunity from prosecution.[3]

In the light of this common and continued acceptance of *Brown* v. *Walker* by Congress and the Court, it should require much more than an appeal to Chief Justice Taney's famous remark on constitutional adjudication[4] to evoke a full *de novo* re-

[2] For comments on *Brown* v. *Walker*, see 8 Wigmore, *Evidence* (3d ed. 1940) §§ 2255, 2281; Corwin, *The Supreme Court's Construction of the Self-Incrimination Clause*, 29 Mich. L. Rev. 191, 197 (1930); Dixon, *The Fifth Amendment and Federal Immunity Statutes*, 22 Geo. Wash. L. Rev. 447, 473 (1954); Note, 10 Harv. L. Rev. 120 (1896).

[3] In fact, the Court has itself suggested to Congress that, if it desires to compel complete disclosure, it can confer the power of unrestricted examination by providing complete immunity. See *McCarthy* v. *Arndstein*, 266 U.S. 34, 42; *Hoffman* v. *United States*, 341 U.S. 479, 490.

[4] In *The Passenger Cases*, 7 How. 283, 470:

> After such opinions, judicially delivered, I had supposed that question to be settled, so far as any question upon the construction of the Constitution ought to be regarded as closed by the decision of this court. I do not, how-

examination at this time of the settled doctrine which supports compulsory testimony legislation. In comparable cases, the practice of the Court has been to accept settled constitutional doctrine unless strong and special reasons for revision are presented. Cf. *e. g., Galvan* v. *Press*, 347 U. S. 522; *Society for Savings* v. *Bowers*, 349 U. S. 143; *Blau* v. *United States*, 340 U. S. 159; *United States* v. *Caltex, Inc.*, 344 U. S. 149. Here, aside from an assertion of changed conditions—a point we discuss below at pp. 19-20, 24-28—petitioner brings forward only arguments which were considered and rejected in 1896 and thereafter. In these circumstances, we believe it necessary to do no more than catalog his points and answer them summarily.

1. Petitioner first urges that the meaning of the Fifth Amendment privilege against self-incrimination should be determined solely by a literal construction of the words "No person * * * shall be compelled in any criminal case to be a witness against himself." To petitioner, the "literal meaning" of the language is that compulsory testimony is prohibited "regardless of the considerations offered" (Pet. Br. 10). However, read "literally",

---

ever, object to the revision of it, and am quite willing that it be regarded hereafter as the law of this court, that its opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should hereafter depend altogether on the force of the reasoning by which it is supported.

See Brandeis J., dissenting in *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406 ff.

the privilege only has application to a criminal case, and then only to the accused. Petitioner would surely not insist on a literal reading if the result must be the denial of the privilege to a witness in a civil suit or before a committee of Congress or before a grand jury, as was petitioner. And even if the privilege be interpreted to extend to a witness other than the accused, petitioner is not helped. On its face the privilege is concerned solely with criminality. In that context, can it be said that an ordinary witness is compelled to be a "witness against himself", within the meaning of the privilege, where his revelations can in no way subject him to criminal prosecution?

The historical fact is, of course, that like all the great provisions of the Constitution the significance of the Self-Incrimination Clause "is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth". *Gompers v. United States*, 233 U.S. 604, 610; *Robertson v. Baldwin*, 165 U.S. 275, 281-2. Together with the comparable clauses in the state constitutions, the Fifth Amendment's self-incrimination provision has always been read in the light of the common-law privilege rather than as limited by the exact confines of a particular constitutional phraseology. See 8 Wigmore, *Evidence* (3d ed. 1940), § 2252. For instance, a witness is protected as well as an accused (*Counselman v. Hitchcock*, 142 U.S. 547); the privilege applies not only to criminal trials themselves but also to grand jury proceedings (*Blau v. United States*, 340 U.S.

159, 340 U.S. 332), and to appearances before congressional committees (*Quinn v. United States*, 349 U.S. 155, 161-2). Just as the clause has not been read literally in these decisions, so it is too late to stand upon the literal words of the Clause as the ground for invalidating compulsory-testimony legislation.

2. The contention that the constitutional privilege was intended to protect the witness from disgrace and infamy resulting from disclosures was last advanced by Mr. Justice Field in his dissent in *Brown v. Walker*, at pages 631-632. It finds no support in the development of the common-law privilege which is directed solely against prosecution for crime. See 8 Wigmore, *Evidence* (3d ed., 1940) §§ 2252-2261, especially § 2255; *Brown v. Walker*, 161 U.S. at 598. The Court has uniformly rejected disgrace or public approbrium as sufficient reason for invocation of the privilege. "It is not declared [by the Fifth Amendment] that he [a witness] may not be compelled to testify to facts which may impair his reputation for probity, or even tend to disgrace him, but the line is drawn at testimony that may expose him to prosecution. If the testimony relate to criminal acts long since past, and against the prosecution of which the statute of limitations has run, or for which he has already received a pardon or is guaranteed an immunity, the amendment does not apply." *Hale v. Henkel*, 201 U.S. 43, 66-67. See, to the same effect, *Smith v. United States*, 337 U.S. 137, 147.

Congress has long been of the same view. As far back as 1862, it provided that no witness

was privileged to decline to testify or to produce papers before either House, or any committee "upon the ground that his testimony to such fact or his production of such paper may tend to disgrace him or otherwise render him infamous". Act of January 24, 1862, 12 Stat. 333, R.S. 103, 2 U.S.C. 193.

Great stress is laid by petitioner (Pet. Br. 11-16) on what he asserts to be a vast difference between the public opprobrium to which he would be subjected today if his compelled testimony revealed a connection with espionage or sedition, and the obloquy suffered by the auditor in *Brown* v. *Walker* and the others whose testimony has been compelled under the many immunity statutes on the books. Although we can hardly agree that the validity of the 1954 Act should turn on a nice appraisal of degrees of odium, we do suggest that petitioner, with his eyes fixed on the present, has forgotten the impact of the great investigations of the past—federal, state, and municipal—which in their day stirred tremendous public interest and controversy. History does not support the claim to uniqueness. In any event, the more serious the revelation the stronger must be the expected reaction, and if the witness secures immunity the risk of public opprobrium "is a penalty which no reasonable man should be compelled to pay for the common good." *Brown* v. *Walker*, 161 U.S. at 606.

It may also be noted that even silence cannot protect petitioner from what he calls "the tyranny of public opinion". (Pet. Br. 20). Although the priv-

lege is the shield of the innocent as well as the guilty and no legal inferences may be drawn from its use, it is the plain fact that inferences are actually drawn by portions of the public. It may even be that, were petitioner to embrace immunity and truthfully answer the questions asked him, his standing with his fellows in the community would improve rather than suffer, as he assumes.

3. Like the witness in *Brown* v. *Walker* (see 161 U.S. at 622), petitioner also argues that if he is compelled to testify under the statute he will subject himself to the danger of a perjury prosecution based upon his compelled testimony. This, he says, denies him his constitutional privilege (Pet. Br. 23). However, the privilege is one permitting a person to refuse to give testimony which may tend to subject him to prosecution for a prior criminal act. If it were also to permit one to refuse to give testimony having no incriminating aspect for the reason that he might be prosecuted for perjury, it would become a privilege not to give testimony at all.[*] But our system of law rests on the fundamental duty of persons to testify so that truth may be ascertained by the tribunal as best it can. The "public has a right to every man's evidence," and no man should be allowed to refuse to perform that duty because he fears that others will not think his

[*] Lord Chancellor Hardwicke in the debate in the House of Lords on the Bill to indemnify Evidence; 12 Hansard's Parliamentary History of England, 675, 693, May 25, 1742, quoted in the dissenting opinion of Mr. Justice Frankfurter, *United States* v. *Monia*, 317 U.S. 424, 432; and in 8 Wigmore, *Evidence* (3d ed. 1940) § 2192 at p. 64.

testimony truthful. Certainly, the ordinary witness cannot win immunity from testifying on any such ground; nor can he justify resort to a plea of self-incrimination by claiming that his testimony is likely to be used as the basis for a perjury prosecution. See *e.g., United States* v. *Bryan*, 339 U.S. 323, 341-2.

Petitioner's position is not essentially different. He is not faced with any true dilemma. Like the ordinary witness (who claims no privilege against self-incrimination), he does not have to fear criminal prosecution for matters he reveals on the stand; but like the ordinary witness he is subject to a charge of perjury if he lies. For these reasons, it has been established that immunity statutes do not and need not bar prosecution for perjury committed while testifying under their compulsion. *Glickstein* v. *United States*, 222 U.S. 139;* *Cyan-cron* v. *United States*, 231 U.S. 710; see *United States* v. *Bryan*, 339 U.S. 323, 341; *Heike* v. *United States*, 227 U.S. 131, 141. "This must be the result, as it cannot be conceived that there is power to compel the giving of testimony where no right exists to require that the testimony shall be given under such circumstances and safeguards as to compel it to be truthful." *Glickstein* v. *United States*, *supra*, at p. 142.

Petitioner's imputation that our judicial proc-

* This, despite the fact that the immunity statute before the Court in *Glickstein* contained no clause, such as is found in the present statute (*infra*, p. 55a), expressly exempting perjury from its reach.

cases are being manipulated to bring unfounded charges of perjury in "political cases" to convict innocent persons when prosecutions "for such crimes as espionage, sedition and the like" will not lie (Pet. Br. 24-28), while devoid of legal relevance, should not pass unnoticed. Petitioner was not summoned before the grand jury in order to entrap him, but in order to obtain information considered necessary in a continuing investigation into espionage and other security violations. There is no reason to assume or to assert otherwise in this case, any more than in the hundreds of other cases in which inquiries are made or investigations are undertaken each day by the Federal Government. Such inquiries and investigations cannot be stopped by facile claims that the purpose is to lay a foundation for perjury charges against potential witnesses. The purpose of the Government's law officers, today as in the past, is to enforce the criminal law not to persecute or be vindictive. However, we need not remind the Court that perjury is a serious offense which may not go unpunished lest our system of justice suffer.

Moreover, the validity of a general statute like the Immunity Act of 1954 cannot pivot on allegations that a particular witness will be unfairly harried and mistreated. The Act is not directed at petitioner or limited to the present period; it is general in scope and indefinite in duration. It must be viewed as the permanent legislation it is, and not, as petitioner would have it, as a special persecutory device designed for his particular detri-

ment. All general legislation is potentially subject to abuse and here, as throughout the law, reliance must be placed on courts and public officials to prevent or forestall abuse and injustice in particular applications of general provisions. There is no call to void the statute outright because there may possibly be some harshness or oppression in its administration." See *United States* v. *Butler*, 297 U.S. 1, 87-88 (Mr. Justice Stone dissenting).

f. Petitioner also urges that the Court was led into error in *Brown* v. *Walker* by its over-concern for the regulation of corporate enterprise, thus disregarding the relationship of the Self-Incrimination Clause to political and religious dissent (which is said to be involved here) (Pet. Br. 9-12).[7] Whatever may be said of petitioner's recital of history, he surely cannot bring his case under the rubric of mere political dissent. The questions which were asked him, and as to which he was granted immunity, related to actual espionage, the transmitting of classified information to a foreign power (see R. 2-4, 46, 49). By no stretch of the imagination, and under no theory, can such matters be thought to be anything but serious crimes against the national security and defense. Espionage cannot be equated with free speech and "dissident be-

[7] Petitioner's argument that this Court must have been unaware of the claimed interests of "dissenters" is largely undermined by his own characterization of Judge Grosscup's decision in *United States* v. *James*, 60 Fed. 257, 264-5 (N.D. Ill.), as "prophetic" "of recent developments" (Pet. Br. 13-14). Judge Grosscup's ruling was considered by this Court in *Brown* v. *Walker* and was rejected. See 161 U.S. at 627-628.

liefs". If, as petitioner says, the Court was induced to decide *Brown* v. *Walker* by the then need to secure information in investigations under the Interstate Commerce Act, there is surely at least as great need and justification today for obtaining information in the area of espionage.

B. *The possible imposition on petitioner of non-criminal disabilities does not remove the 1954 Act from the rule of Brown* v. *Walker*

Petitioner points to various disabilities of a non-criminal nature to which he claims he might be subject were he to testify and contends that the 1954 Act is unconstitutional for failure to protect him against them (Pet. Br. 15-20). In this respect, he says, his situation differs markedly from that of the recalcitrant witness in *Brown* v. *Walker*.

Petitioner does not urge that these disabilities are criminal in nature, nor can he. See *United States ex rel. Marcus* v. *Hess*, 317 U.S. 537; *Helvering* v. *Mitchell*, 303 U.S. 391; *Amato* v. *Porter*, 157 F. 2d 719 (C.A. 10), certiorari denied, 329 U.S. 812. What he does urge is, *first*, that these sanctions, though non-criminal, nevertheless furnish sufficient reason for invoking the privilege against self-incrimination (Pet. Br. 19), and, *second*, that the 1954 Act does not grant immunity against the imposition of these sanctions (Pet. Br. 18). It follows, in petitioner's view, that he is still free to invoke the privilege because the immunity granted by Congress is not as broad as his constitutional privilege. Cf. *Counselman* v. *Hitchcock*, 142 U.S.

547; *Smith* v. *United States*, 337 U.S. 137, 149-7. To prevail on this point, petitioner must sustain both of his propositions.

1. The privilege accorded by the Fifth Amendment relates to criminal proceedings, to penalties, and to forfeitures. *Boyd* v. *United States*, 116 U.S. 616. But it does not apply to non-penal civil liability or to proceedings to remove or restrain a person from certain activities or situations because of unfitness or unsuitability. Cf. *Vajtauer* v. *Commissioner of Immigration*, 273 U.S. 103, 111-112 (deportation); *Bilokumsky* v. *Tod*, 263 U.S. 149, 153-5 (deportation); 8 Wigmore, *Evidence* (3d ed. 1940), § 2257, p. 333 (citing state cases on disbarment and removal from public office). In other words, one cannot claim the privilege against self-*incrimination* on the ground that the testimony sought will subject him to *civil* liability or will show him to be *unsuitable* for a job, position, license, or status he now holds.

The possible "disabilities" petitioner lists (Pet. Br. 16-19) all fall into this latter category (so far as they have any relevance at all). They are prophylactic measures designed to remove dangerous or unsuitable persons from areas in which they can do harm, but they are not criminal or punitive sanctions. See Brief for Respondent, *Communist Party* v. *Subversive Activities Control Board*, No. 48, this Term, pp. 87-101, 164-209. If any of these disabilities should ultimately be imposed upon petitioner as a result of his answers to the grand jury's questions, it will not be to punish him for his past acts but

because his testimony, in the view of the proper authorities, demonstrates that he is now unfit, unsuitable, untrustworthy, or dangerous. His situation would be comparable to that of a witness who has revealed, pursuant to an immunity statute, a long course of embezzlements of public funds; such a witness obviously cannot claim an immunity against his ousting from public employment as a self-revealed thief.

Furthermore, petitioner makes no showing as to which, if any, of these sanctions he personally fears. For example, he makes no showing that he is (and it is our understanding that he is not) a federal employee, defense facility employee, longshoreman, merchant mariner, member of the armed forces, official of an international organization, radio station operator, university professor, state or city employee, school teacher, or union official. Not only is the privilege confined to facts reasonably having a tendency to criminate, it "is confined to real danger and does not extend to remote possibilities out of the ordinary course of law." *Heike v. United States*, 227 U. S. 131, 144.[8] The mischief which would result if the privilege were now to be converted into a right of silence where a witness feared that non-criminal sanctions *might possibly* attach at some indeterminate future date is obvi-

[8] See also *Mason v. United States*, 244 U. S. 362, 365-6; *Rogers v. United States*, 340 U. S. 367; *Blau v. United States*, 340 U. S. 159; *Hoffman v. United States*, 341 U. S. 479, 486-7; *Emspak v. United States*, 349 U. S. 190, 205-6 (Mr. Justice Harlan dissenting).

ously incalculable. There would be an absolute right to silence, since there could be no standard by which to determine the validity of such a broad claim of privilege.

2. Let us assume, however, that petitioner is right in saying that these non-criminal sanctions "*must* be regarded as reason for invoking the 'privilege'" (Pet. Br. 19), *i.e.*, that these sanctions are really foreseeable and are true penalties or forfeitures in the criminal sense. Since an immunity statute "should be construed, so far as its words fairly allow the construction, as coterminous with what otherwise would have been the privilege of the person concerned" (*Heike* v. *United States*, 227 U. S. 131, 142; *Shapiro* v. *United States*, 335 U. S. 1, 19), it would follow that the 1954 Act should be read, if possible, as granting petitioner immunity against these sanctions.[9] That could well be done because Section (c), *infra*, pp. 54-55, does not limit itself to criminal prosecution but also covers "any penalty or forfeiture, for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence". Therefore, if petitioner is correct in his contention as to the nature of the "disabilities" he catalogs, he will be able to assert his immunity if the Government should hereafter attempt to impose these sanctions upon him. *If* he

[9] We refer mainly to the federal "disabilities"; for the state "disabilities" see *infra*, pp. 31-35.

has a right to protection, he is fully protected." See *Regan* v. *New York*, 349 U. S. 58, 62-64, requiring the witness to testify, and leaving for later determination the validity of his waiver of his statutory immunity.

C. The 1954 Act does not, and need not, bar prosecution for future criminal acts.

Petitioner also challenges the 1954 Act on the ground that compelled testimony may be used against a witness, directly or indirectly, in a prosecution for violation of law occurring subsequent to his testimony. In this connection, he points especially to a continuing conspiracy (Pet. Br. 24).

As petitioner states (Pet. Br. 21), the Immunity Act of 1954 does not grant immunity from prosecution for future law violations. It is axiomatic that the privilege against self-incrimination relates solely to facts tending to subject one to prosecution for present or past crime. It has no relation "to future acts that may or may not be committed." *United States* v. *Kahriger*, 345 U. S. 22, 32; *Lewis* v. *United States*, 348 U. S. 419, 422. Consequently, an immunity statute need not bar prosecution for future crime. It absolves a witness from criminal liability for crime committed, and does not provide him with a license to commit crimes in the future.

We have found no cases decided by this Court which involve prosecution for criminal acts committed subsequent to testimony compelled under an immunity statute. However, petitioner cites four cases in lower federal courts as being of this

nature (Pet. Br. 21). Two of the cases (*United States* v. *Moore*, 15 F. 2d 593 (D. Ore.) and *United States* v. *Swift*, 186 Fed. 1002 (N. D. Ill.)) involve continuing conspiracies, and are in disagreement as to the result. In the *Moore* case, the court sustained a plea in bar, holding that prosecution would not lie for a conspiracy concerning which evidence was given by the defendants under immunity, even though one overt act occurred subsequent to the giving of the evidence. In the *Swift* case, a motion to quash the indictment was denied, the court holding that the continuation of the conspiracy resulted in a new violation of law to which immunity did not extend, and that facts testified to under immunity, if legally competent and relevant, could be shown at the ensuing prosecution.

United States v. *Smith*, 206 F. 2d 905 (C. A. 3), and *United States* v. *Frontier Asthma Co.*, 69 F. Supp. 994 (W. D. N. Y.), also cited by petitioner, were not conspiracy cases. In the *Smith* case, the court held that, although the defendant testified before the Office of Price Administration under an immunity statute, he was not immune from prosecution for subsequent income tax evasion, even if the revenue agents used information given before the O. P. A. The *Frontier Asthma* case merely held that where individual defendants had testified under immunity to facts occurring before April, 1943, an indictment which only charged acts occurring in 1946 should not be dismissed.

Although prosecution should clearly lie for a fresh conspiracy, or for any other new crime, and

there is no impairment of the witness' privilege on this account, the question remains whether use in aid of the prosecution may be made of the immunized transactions. There is much to be said for the view expressed in the *Swift* and *Smith* cases that it may. Since the purpose of the privilege is solely to protect a witness from being compelled to make disclosures having a tendency to subject him to prosecution for crime already committed, immunity from such prosecution removes the criminality so that the object of the privilege is satisfied and it ceases to apply. If the witness then goes out and commits crime anew, he should not be heard to complain if his previous testimony has, by virtue of his own fresh criminal act, now become of aid, directly or indirectly, to the prosecution for that subsequent act. Cf. *United States* v. *Kahriger*, *supra*, 345 U. S. 22; *Lewis* v. *United States*, *supra*, 348 U. S. 419.

However, if, in a proper case, this Court should decide that prosecution for crime committed after compulsion of testimony can in no way be aided by the compelled disclosures, the language of the 1954 Act is susceptible of a construction consistent with that view. It provides that "no such witness shall be prosecuted * * * for or on account of any transaction, matter, or thing concerning which he is compelled * * * to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding * * * against him in any court." Plainly, the last clause may be read to bar the use of the testimony in "any

criminal proceeding" whether it is a prosecution for crime committed before or after testifying. The prohibition against prosecution "for or on account of any transaction, matter, or thing" concerning which testimony is compelled may be given a similarly broad construction.

Congress has evinced an intention that the statute bar state prosecution, if constitutionally possible, in the interest of giving the witness the "fullest protection." H. Rep. No. 2606, 83d Cong., 2d Sess., p. 7; see the opinion of Weinfeld, D. J., R. 35-6. There is, therefore, reason to think that a construction barring the use of compelled disclosures in aid of prosecution for subsequent crime would not conflict with Congressional intent. Of course, whether the statute should be so construed is not at issue in the present case. The proper application can be given if and when the occasion arises. Cf. *Touhy* v. *Ragen*, 340 U. S. 462, 467; *United States* v. *Harriss*, 347 U. S. 612, 626-7; *Regan* v. *New York*, 349 U. S. 58 (see *supra*, p. 28; *infra*, p. 51).

D. *The Immunity Act of 1954 need not bar state prosecution.*

1. Petitioner contends that the immunity statute fails to confer complete immunity because it leaves him subject to state prosecution (Pet. Br. 28-35). However, this contention has been conclusively rejected in a series of cases culminating in *United States* v. *Murdock*, 284 U.S. 141, where the Court said (p. 149):

> This court has held that immunity against state prosecution is not essential to the validity of federal statutes declaring that a witness shall not be excused from giving evidence on the ground that it will incriminate him, and also that the lack of state power to give witnesses protection against federal prosecution does not defeat a state immunity statute. The principle established is that full and complete immunity against prosecution by the government compelling the witness to answer is equivalent to the protection furnished by the rule against self-incrimination. *Counselman* v. *Hitchcock*, 142 U.S. 547. *Brown* v. *Walker*, 161 U.S. 591, 606. *Jack* v. *Kansas*, 199 U.S. 372, 381. *Hale* v. *Henkel*, 201 U.S. 43, 68. * * * .

As the Court pointed out, the principle applies not only to federal immunity statutes but to those of the states, which, of course, cannot and need not preclude federal prosecution to make the grant of immunity effective as a requirement to testify. See also, to the same effect, *Feldman* v. *United States*, 322 U.S. 487, 491-492, cf. *Regan* v. *New York*, 349 U.S. 58.[10]

[10] Petitioner relies on four federal cases (Pet. Br. 34-35); two in this Court and two in the lower courts. *Marcello* v. *United States*, 196 F. 2d 437, 442 (C.A. 5), expressly recognized the rule of the *Murdock* case and upheld the refusal to answer on the ground of possible incrimination for a federal offense. In *United States* v. *DiCarlo*, 102 F. Supp. 597 (N.D. Ohio), the court conceded, citing *Murdock*, that an investigation under federal law respecting federal matters

Because the immunity statute need not bar state prosecution, it becomes immaterial to this case whether Congress has undertaken to, and can, do so. The question would require decision only if and when a state prosecutes petitioner for matters on which he testified in obedience to the order he has so far defied.

2. If the Court should find it necessary to reach, at this time, the question of the effect of the 1954 Act on state prosecutions, we submit that (a) Congress intended to and did bar state prosecutions, and (b) Congress has constitutional power so to provide. Since these matters have been treated in

---

(which is the present case) cannot be impeded by a plea of possible incrimination under state law (p. 603). It merely ruled that, when federal officials directly investigate state crime, the privilege protects the witness from state as well as federal incrimination.

United States v. *Saline Bank*, 1 Pet. 100, concerned a bill in equity for discovery and relief. The Court, in *Hale* v. *Henkel*, 201 U.S. 43, 69, pointed out with respect to the *Saline Bank* case that the prosecution was under the law of the State of Virginia; that the federal court was, simply, administering state law; and that no question of prosecution under another authority was involved. See also Corwin, *The Supreme Court's Construction of the Self-Incrimination Clause*, 29 Mich. L. Rev. 191, 197-198, n. 103 (1930). Mr. Justice Holmes' statement in *Ballmann* v. *Fagin*, 200 U.S. 186, that Ballmann "was exonerated from disclosures which would have exposed him to the penalties of the state law" (p. 195) was dictum, as the right of Ballmann to refuse to produce had been upheld on the ground of possible incrimination under Rev. Stat. sec. 5209. Just two months after the *Ballmann* case, the same Court in *Hale* v. *Henkel*, *supra*, held that a witness cannot refuse to answer questions before a federal grand jury in the face of a federal immunity statute on the ground that the immunity does not extend to prosecutions in state courts.

detail by Judge Weinfeld in the District Court (see R. 35-36), we shall merely summarize the arguments supporting these conclusions.

(a) As the House Committee Report makes clear, Congress certainly intended to cover state prosecutions, if it could. See *supra*, p. 31; R. 35-36; Pet. Br. 28-29. The language of Section (e), *infra*, pp. 53-55, is broad enough to carry out this purpose: Without limitation to federal proceedings, the statute flatly provides that "no such witness *shall be prosecuted or subjected* to any penalty or forfeiture" on account of the subject of testimony. As for use of the compelled testimony itself, it cannot "be used as evidence in any criminal proceeding * * * against him *in any court*" (emphasis added). Nowhere is there a restriction to federal tribunals or an exclusion of state courts. The precedent of *Brown* v. *Walker*, 161 U.S. at 607-8 construing the comparable provisions of the Compulsory Testimony Act of 1893 to apply to state prosecutions—should be sufficient authority. Besides, it goes almost without saying that if there be doubt as to meaning, and if coverage of state prosecutions is a precondition to validity, the Act must be read in the broader fashion so as to save it. *United States* v. *Harriss*, 347 U.S. 612, 618; *United States* v. *Rumely*, 345 U.S. 41, 47; *United States* v. *C.I.O.*, 335 U.S. 106 (see also *infra*, pp. 43-44).

(b). The power of Congress to grant immunity, in these circumstances, against state criminal prosecution was first upheld in *Brown* v. *Walker*, 161 U.S. at 606-607, under the Supremacy Clause.

As petitioner's brief points out (pp. 32-33), that ruling has not allayed all doubts. But the recent case of *Adams* v. *Maryland*, 347 U. S. 179, 183, has at least settled Congress' power to preclude use in state proceedings of the compelled testimony itself. The roots of the *Adams* decision in the Supremacy and Necessary and Proper Clauses likewise support the authority of Congress to prohibit all state prosecutions relating to the subject matter of the compelled testimony—where, as here, that subject matter is plainly one in which the interest of the Federal Government is dominant over that of the states. All the crimes covered by the 1954 Act—including espionage, involved in this case—are within the Federal Government's special domain, and Congress's power to prevent and prohibit those crimes necessarily includes the authority to take all steps required to make federal action effective and to protect it against interference from any source. Cf. *Hines* v. *Davidowitz*, 312 U. S. 52. See the discussion in the Brief for the United States as *Amicus Curiae* in *Commonwealth of Pennsylvania* v. *Nelson*, No. 10, this Term, at pp. 9-11, 16-17, 46-49.

II

The Act Does Not Empower the District Court to Grant Immunity or to Approve the Propriety of the United States Attorney's Judgment that the Witness' Testimony Is in the Public Interest

Petitioner strongly contends that the 1954 Act gives the District Court the power to grant immunity (or, at least, to approve the propriety of

the grant) (Pet. Br. 35-46), that this is not a judicial function, and, hence, that the statute must be struck down for violation of the doctrine of separation of powers (Pet. Br. 46-52). The argument falls with its basic premise—that the court grants immunity in its discretion—which is clearly erroneous.

—

A. The terms of the Act do not give the District Court power to "grant" immunity or to review the propriety of the United States Attorney's judgment that the testimony of the witness is necessary to the public interest.

The Government is of the view, and the courts below have adopted the construction, that the statute does not give the District Court the power to *grant* immunity. In brief compass, our position is that the statute, in clear and unambiguous terms, (1) *authorizes* the United States Attorney, with the approval of the Attorney General, to apply to the court for an order compelling the witness' testimony if, in a designated class of proceedings before a court or grand jury, the witness has claimed his privilege against self-incrimination and refuses to testify; (2) *empowers* the court to order the witness to testify if the court determines the case to be within the framework of the statute; and (3) *grants* immunity from prosecution to the witness whose testimony is so compelled. Under this construction, the United States Attorney and the Attorney General perform the *executive* function of determining whether the public interest

will be served by this witness, being immunized against prosecution in exchange for his testimony; the court performs the *judicial* function of determining whether this case falls within the purview of the statute; and Congress exercises the *legislative* right of granting amnesty or immunity to the witness in return for his testimony.

A brief analysis of the statute will help to demonstrate the correctness of these views. Section (e), *infra*, pp. 53-55, provides that (1) there must be a proceeding before a grand jury or a case in the District Court; (2) the subject matter must relate to interference with or endangering of, or attempts to interfere with or endanger, the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy or the like; (3) it must appear that in the judgment of the United States Attorney the testimony of a witness regarding such matters is necessary to the public interest; (4) the United States Attorney, with the approval of the Attorney General, shall make application to the court requesting that the witness be required to testify; and (5) upon order of the court the witness shall not be excused from testifying or producing evidence. There then follows the provision that the witness shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence.

As this summary shows, there is no language in the statute which suggests that the District Court is empowered to review the judgment of the United States Attorney, as approved by the Attorney General, that the witness' testimony is necessary to the public interest and that a grant of immunity is warranted. The whole emphasis is on the "judgment" of the United States Attorney and the "approval" of the Attorney General; the "order of the court" to which Section (c) refers is not bottomed upon the court's "approval" or upon exercise of the court's own discretion. This is made particularly clear by Sections (a) and (b) of the Act (*infra*, pp. 52-53) which relate to congressional investigations (not involved in this case) and provide expressly that the court must *approve* the Committee's grant of immunity to the witness before his testimony may be compelled. In these circumstances, as the courts below observed,[11] "it is logical to assume that had the Congress intended, with respect to grand jury and court proceedings, to vest the same discretion and power of approval in the court as in the instance of congressional investigations it would have used the very language employed in the section dealing with congressional committees" (R. 38).

Moreover, the function actually performed by the court is solely judicial. Absent a statute granting immunity from prosecution to a witness who has validly invoked his privilege against self-

[11] The Court of Appeals adopted the reasoning and conclusions of the District Court's opinion (R. 55).

incrimination, the courts are powerless to compel him to answer. Under this Act, the court is empowered to order the witness to answer when it appears (1) that the conditions specified in the statute, and outlined above, exist and (2) there is no other legal objection to the compulsion of the witness' testimony. In this manner the order of the court gives assurance that the immunity power will not be dissipated in cases outside the framework of the congressional plan and that the witness will be protected from subsequent prosecution touching the matters about which he is compelled to testify.[28] This is concededly a judicial function.

This construction of the statute, adopted by both courts below and plainly required by its language, eliminates the need to consider the asserted constitutional problem which would arise if there were ground for the suggestion that the District Court is called upon to determine the propriety of granting immunity.

B. *The legislative history of the Act, so far as it is pertinent, supports our construction that Congress did not impose a non-judicial function upon the District Court.*

1. *The Report of the House Judiciary Committee sustains our interpretation.* Straining for an unconstitutional construction, petitioner argues

[28] This, for example, the court would be obliged to dismiss an application for an order compelling the witness' testimony if the application alleged that the proceedings in which the witness had appeared involved a violation of the Internal Revenue Code, or were being held before an administrative agency, or that the Attorney General had refused his approval

that the legislative history of the statute supports his view that Congress intended to vest a non-judicial function in the District Court. But there is nothing in the history which compels this construction. The most authoritative extrinsic aid in ascertaining the intent of Congress is the report of the House Committee on the Judiciary (H. Rep. No. 2606, 83d Cong., 2d Sess., Aug. 3, 1954) which accompanied S. 16—the 1954 Act—as it finally was enacted. *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 474; see *Gooch* v. *United States*, 297 U. S. 124, 127. And this Report fails to justify petitioner's reading of the statute, as an examination of the quotations which petitioner selects (Pet. Br. 40) will illustrate. The first quotation, from page 4 of the Report, merely affirms that the measure requires that "*application be made to a court* after the approval of the Attorney General," an undisputed proposition which is no help to the petitioner. Petitioner then quotes from page 8 of the Report where, with reference to witness *before committees of Congress*, it is said:

> Finally, before the immunity is actually granted to the witness, the approval of the United States district court wherein the inquiry is being conducted is to be obtained.

As we have noted (*supra*, p. 38), this observation is, if anything, adverse to petitioner's view since the provision regarding witnesses before grand juries significantly omits any requirement of "approval" by the District Court.

Nor is petitioner aided by his last quotation which omits the very pertinent language, which follows the first sentence quoted on page 40 of his brief. After the statement that "(i)n cases before a grand jury or a court similar precaution exists," the Committee Report goes on to say:

> In such instances, if a United States attorney decides that in an authorized matter immunity should be granted to a witness who has claimed his privilege, that prosecutor, *having adjudged such testimony to be necessary in the public interest*, must first obtain the approval of the Attorney General for such grant and then apply to the court for the *necessary instruction* to the witness to testify or produce evidence. All conditions must be complied with before the grant of immunity can be given the witness. [Emphasis added.]

As the courts below concluded, "(t)his language hardly supports the view that the court is to exercise a discretionary function or a veto power as to whether the testimony of the witness is required in the public interest. The 'necessary instruction' to the witness appears to refer to the usual direction or instruction issued by a court whenever a witness refuses, without legal justification, to answer questions before a grand jury or court. This instruction or order issued only after the witness has been afforded an opportunity to advance his objections, forms the basis of subsequent proceedings for failure to comply." (R. 40).

The Debates Preceding the Statute's Enactment are Inconclusive:—Petitioner also quotes some excerpts from the debates in Congress which preceded the statute's enactment. But little aid can be drawn from these remarks. It is apparent, from the excerpts quoted by petitioner, as well as from the legislative history itself, that most of the discussion in Congress was centered upon that portion of the measure which related to investigations by congressional committees. The few statements offered by the petitioner relating to Section (c) of the statute (the grand jury and court section), notably those of Representative Keating (Pet. Br. 41-2), are too general in their references to court action to form a solid foundation for overthrowing the Act's clear wording and the Report of the House Judiciary Committee. And in relying on Representative Keating's earlier views as to non-participation by courts (Pet. Br. 37-39), as proof that in rejecting his bill the House Judiciary Committee was inclining towards petitioner's interpretation of the statute, petitioner overlooks the numerous substantial changes which caused the Committee to draft a markedly different bill; not only as a substitute for Representative Keating's bill, but also for the bill which passed the Senate. See R. 41-2. In sum, as the District Court concluded from its careful analysis (R. 42), "The most that can be said for the legislative history is that it is on the whole inconclusive."

C. If there be doubt, the construction of the statute which avoids the constitutional question should be preferred

As we have shown (*supra*, pp. 36-39), the Act itself lends no support to the argument that constitutional doubt should be found by holding that the District Court is required to judge the desirability, from the viewpoint of the public interest, of ordering the witness to testify in exchange for a grant of immunity. In these circumstances, petitioner's attempt to create an issue of validity is decisively answered by the familiar teaching that "even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Crowell v. Benson*, 285 U. S. 22, 62; *United States v. Rumely*, 345 U. S. 41, 45; *United States v. C. I. O.*, 335 U. S. 106, 121. We think the construction found by the courts below is more than "fairly possible." It is the natural and reasonable import of the statutory language, and it disposes, of course, of petitioner's contention that the Act imposes a non-judicial function upon the court which violates the separation of powers doctrine.

We need only add, with reference to petitioner's analysis of the commentaries and decisions which are said to suggest that the determination of whether immunity ought to be given to a specific individual involves a "delicate policy judgment" (Pet. Br. 48) and hence "is not the stuff of judicial decision" (Pet. Br. 49), that Congress has, as

shown above, properly placed that judgment in the hands of those most capable of exercising it, the United States Attorney and the Attorney General.

D. *Petitioner cannot question the validity of the statutory provisions relating to Congressional investigations*

There remains to consider petitioner's argument that Sections (a) and (b) (dealing with witnesses before Congressional committees) are unconstitutional and that, therefore, the Court should strike down Section (c) as well (Pet. Br. 51-52).

Sections (a) and (b) have not been applied to petitioner, and it is settled that a litigant can question a statute's validity only *when* and *so far* as it is being or is about to be applied to his disadvantage. *Dahnke-Walker Co. v. Bondurant*, 257 U. S. 282, 289; *Blackmer v. United States*, 284 U. S. 421, 442; see also *Commonwealth of Massachusetts v. Mellon*, 262 U. S. 447; *Jeffrey Mfg. Co. v. Blagg*, 235 U. S. 571, 576. Otherwise, the Court would constantly be deciding constitutional questions without any necessity therefor, contrary to the basic canon of constitutional adjudication. *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 346-347.

Moreover, even if it be assumed *arguendo* that Sections (a) and (b) are unconstitutional, it obviously cannot be said that the provisions relating to grand juries are so connected with or dependent upon those pertaining to Congressional investigations that the former would not have been adopted

without the latter. The inquiry of a grand jury and an investigation by a Congressional committee have entirely separate and distinct objectives. Cf. *Hale v. Henkel*, 201 U. S. 43, 65, and *McGrain v. Daugherty*, 273 U. S. 135, 177-179. Further, whether provisions of a statute are so interwoven that if certain ones are held invalid the others must fall, presents a question of legislative intent. *Carter v. Carter Coal Co.*, 298 U. S. 238, 312-313, and cases cited therein; *Williams v. Standard Oil Co.*, 278 U. S. 235, 243. The Congressional desire that Section (c) is to be considered wholly independent of Sections (a) and (b) was clearly expressed by Representative Keating, a member of the Judiciary Committee and one of the bill's leading proponents, who stated that the bill could be "divided into two *separate parts*, sections (a) and (b), having to do with the investigating procedure before a congressional committee and section (c) dealing with the granting of immunity in a court or grand jury proceeding." (100 Cong. Rec. 12603; emphasis added).

In these circumstances, the absence of a separability clause would not be decisive. See *Steward Machine Co. v. Davis*, 301 U. S. 548, 598. Section (c) is independent and valid and may therefore stand and be enforced. *Dorchy v. Kansas*, 264 U. S. 286, 289-290; *Field v. Clark*, 143 U. S. 649, 695-697; *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 565. Furthermore, it should be noted that the Immunity Act of 1954 is an amendment to Section 3486 of Title 18 of the United States Code

(see *infra*, p. 52), and Section 18 of the Act of June 25, 1948, which recodified Title 18, does contain a separability clause. 62 Stat. 683, 862. The usual strong presumption of separability therefore applies in its full force to this case. *United States v. Harriss*, 347 U. S. 612, 627; *Electric Bond & Share Co. v. Securities & Exchange Commission*, 303 U. S. 419, 433-437.

E. Under the proper construction of the Act, the District Court had sufficient evidence before it to permit a judicial determination that petitioner should be ordered to testify and produce evidence.

The proper construction of the Immunity Act, as we have shown, does not impose upon the court any duty to determine the propriety of the United States Attorney's judgment that it is necessary to the public interest that the witness be compelled to testify in exchange for the statutory immunity. This being so, the District Court properly refused to consider those matters advanced by the petitioner which were directed towards proving that the United States Attorney's judgment was unwise, improvident or unsound. But the District Court was given facts upon which it could, and did, determine that: "(1) the grand jury . . . proceeding relates to investigations in cases involving matters enumerated in section (c); (2) the United States Attorney certifies with respect to such matters it is necessary in the public interest that the testimony of the witness who has claimed his privilege be ob-

tained in exchange for a grant of immunity; (3) the Attorney General approves the application; (4) no other legal objection exists to the compulsion of the witness' testimony" (R. 38).

III

The Grand Jury's Questions Relating to Communist Affiliations of Petitioner and Others Were Proper and Relevant to Its Inquiry and Not Violative of the First Amendment

Petitioner contends next (Pet. Br. 55-58) that he could not be asked questions as to his Communist Party membership because (a) such inquiry is forbidden by the First Amendment and (b) the questions were irrelevant to the grand jury's inquiry.

A. In support of his First Amendment claims, petitioner begins by characterizing the grand jury's questions relating to his membership in the Communist Party as solely an "inquiry into" "political membership and associations," although he appears to concede that this Court has not adopted that view. In this connection, he attempts to dismiss as irrelevant those cases which, consistent with this Court's view, have upheld the power of *Congress* to inquire into Communist Party membership. *United States* v. *Josephson*, 165 F. 2d 82 (C.A. 2), certiorari denied, 333 U.S. 838; *Lawson* v. *United States*, 176 F. 2d 49 (C.A. D.C.), certiorari denied, 339 U.S. 934; *Barsky* v. *United States*, 167 F. 2d 241 (C.A. D.C.).

There is nothing in the First Amendment, however, to support the suggestion that such an inquiry

is necessarily forbidden to a grand jury in appropriate cases while it is permitted to a Committee of Congress. Obviously, the question of whether the inquiry infringes First Amendment rights is not determined by the identity of the branch of the Government which asks the questions. Moreover, the experience which teaches that Communist Party membership may be a highly significant fact in legislative investigations concerned with the national security is at least as pertinent for a grand jury, like the one here, inquiring into possible cases of espionage. See Brief for Respondent, *Communist Party* v. *Subversive Activities Control Board*, No. 48, this Term, at pp. 43-61, 94-97.

B. Similar reasoning disposes of petitioner's claim that the questions were irrelevant to the grand jury's business. It may be noted, first, that the witness "is not entitled to urge objections of incompetency or irrelevancy, such as a party might raise, for this is no concern of his." *Blair* v. *United States*, 250 U.S. 273, 282; *Nelson* v. *United States*, 201 U.S. 92, 115; *United States* v. *McGovern*, 60 F. 2d 880, 888, 889 (C.A. 2). In any event, it was obviously relevant to the grand jury's investigation into whether certain individuals furnished unauthorized information to the Soviet Union to ascertain if such individuals were members of the Communist Party during the period when the information was allegedly furnished. It is difficult to think of a circumstance which would more clearly reflect a motive for furnishing such information than membership in an organization which

is believed, on powerful evidence, to be part of an international conspiracy centered in the Soviet Union. See, *e.g.*, *Dennis* v. *United States*, 341 U. S. 494; *Communications Assn.* v. *Douds*, 339 U. S. 382, 422 *et seq.* (Mr. Justice Jackson, concurring and dissenting, each in part); *Communist Party* v. *Subversive Activities Control Board*, 223 F. 2d 531 (C. A. D. C.), pending on writ of certiorari, No. 18, this Term; and Brief for Respondent in No. 18 (referred to above).

It was clear from the very first question propounded to petitioner (R. 2) that the grand jury was seeking to ascertain what knowledge he had concerning a conspiracy to transmit national defense information to members of the Communist Party and thence to agents of a foreign power during World War II. The testimony sought from petitioner relative to his own membership and that of others went to the very heart of the allegations being considered by the grand jury. Petitioner's observation (Pet. Br. 57) that membership in the Communist Party is not a crime is beside the point. Plainly, the bounds of a grand jury's power are not limited to requiring testimony which in itself affirms or denies the commission of a crime. It is equally clear that the testimony petitioner withheld was properly sought by the grand jury in its inquiry into the crime of espionage.

We have already (*supra*, pp. 21-23) responded to petitioner's charge that the questions are improper because they are designed to entrap him into a perjury prosecution. We are certain that

this Court will reject any such speculative contention fashioned to impugn the motives of the prosecuting officials of the Department of Justice and will agree with this observation of Judge Gialston, below, that "[t]he good faith of the Attorney General when he acts under Section 3486(c) should be assumed" (R. 60).

IV

The District Court's Order Requiring Petitioner to Testify And Produce Evidence Subject to the Provisions of the Immunity Act Is Proper In Form and Affords Him Full Protection From Subsequent Prosecution

Finally, petitioner contends that the District Court's order is invalid for failure to contain an express grant of immunity (Pet. Br. 58). As we have noted earlier, however (*supra*, pp. 36-37), the immunity has been granted by Congress itself in the terms of the statute. It arises by operation of law when all the conditions specified in the Act have been met and the witness has testified in compliance with the court's order. This being true, there is no necessity for a grant of immunity in the order itself. At the outset, the order recites that the United States Attorney has made application for an order instructing the petitioner to testify "pursuant to the provisions" of the immunity statute (R. 44). The order then specifically states that petitioner is ordered to testify "subject to the provisions" of the immunity statute (R. 46). Clearly, he is being compelled under the statute and is protected by the statutory immunity from subsequent prosecution, penalty, or forfeiture touching the subject matter of his testimony.

It is no defect that petitioner may not now be able to tell the precise bounds of his immunity, both because no one knows what prosecutions may be attempted to be brought in the future and also because there may be a dispute as to the meaning of the statutory terms "prosecution", "penal[illegible]", and "forfeiture." See *supra*, pp. 24-28. When the proper time comes, petitioner will, of course, set up his claims and he will then be accorded his entire due under the 1954 Immunity Act. His present position is certainly less difficult than that of Regan who has been required to testify even though it is now uncertain whether his waiver of immunity is valid or invalid. *Regan v. New York*, 349 U.S. 58.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.
WILLIAM F. TOMPKINS,
Assistant Attorney General.
OSCAR H. DAVIS,
Assistant to the Solicitor General.
HAROLD D. KOFFSKY,
B. FRANKLIN TAYLOR, JR.
JOHN H. DAVITT,
Attorneys.

NOVEMBER 1955

The Immunity Act of August 20, 1954, Public Law 600, 83rd Congress, 2d Sess., ch. 769, 68 Stat. 745, 18 U.S.C. 3486 (Supp., II), amends Section 3486 of Title 18 of the United States Code to read as follows:

§ 3486. Compelled testimony tending to incriminate witnesses; immunity

(a) In the course of any investigation relating to any interference with or endangering of, or any plans or attempts to interfere with or endanger the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy or the overthrow of its Government by force or violence, no witness shall be excused from testifying or from producing books, papers, or other evidence before either House, or before any committee of either House, or before any joint committee of the two Houses of Congress on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, when the record shows that—

(1) in the case of proceedings before one of the Houses of Congress, that a majority of the members present of that House; or

(2) in the case of proceedings before a committee, that two-thirds of the members of the full committee shall by affirmative vote have authorized such witness to be granted immunity under this section with respect to the

transactions, matters, or things concerning which he is compelled, after having claimed his privilege against self-incrimination to testify or produce evidence by direction of the presiding officer and

that an order of the United States district court for the district wherein the inquiry is being carried on has been entered into the record requiring said person to testify or produce evidence. Such an order may be issued by a United States district court judge upon application by a duly authorized representative of the Congress or of the committee concerned. But no such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is so compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecutions described in subsection (d) hereof) against him in any court.

(b) Neither House nor any committee thereof nor any joint committee of the two Houses of Congress shall grant immunity to any witness without first having notified the Attorney General of the United States of such action and thereafter having secured the approval of the United States district court for the district wherein such inquiry is being held. The Attorney General of the United States shall be notified of the time of each proposed application to the United States district court and shall

be given the opportunity to be heard with respect thereto prior to the entrance into the record of the order of the district court.

(c) Whenever in the judgment of a United States attorney the testimony of any witness, or the production of books, papers, or other evidence by any witness, in any case or proceeding before any grand jury or court of the United States involving any interference with or endangering of, or any plans or attempts to interfere with or endanger, the national security or defense of the United States by treason, sabotage, espionage, sedition, seditious conspiracy, violations of chapter 115 of title 18 of the United States Code, violations of the Internal Security Act of 1950 (64 Stat. 987), violations of the Atomic Energy Act of 1946 (60 Stat. 755), as amended, violations of sections 212 (a) (27), (28), (29) or 241 (a) (6); (7) or 313 (a) of the Immigration and Nationality Act, (66 Stat. 182-186; 204-206; 240-241), and conspiracies involving any of the foregoing, is necessary to the public interest, he, upon the approval of the Attorney General, shall make application to the court that the witness shall be instructed to testify or produce evidence subject to the provisions of this section, and upon order of the court such witness shall not be excused from testifying or from producing books, papers, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. But no such witness shall be prosecuted

or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding (except prosecution described in subsection (d) hereof) against him in any court.

(d) No witness shall be exempt under the provision of this section from prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion as provided in this section.